

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK (S.D.N.Y.)

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JOHN PETEREC TOLINO

Plaintiff /Claimant,

**JURY TRIAL DEMAND**

24-CV-6911 (UA)

-against—

**AMENDED VERIFIED COMPLAINT**

PENNROSE, LLC;/  
PENNROSE DEVELOPMENT, LLC;  
RISEBORO COMMUNITY PARTNERSHIP,  
HABITAT FOR HUMANITY- NEW YORK CITY,  
NEW YORK CITY MAYOR, ERIC ADAMS,  
CITY OF NEW YORK, COMMISSIONER OF HOUSING,  
PRESERVATION & DEVELOPMENT (HPD): ADOLFO CARRION JR; AND  
FIRST DEPUTY MAYOR, MARIA TORRES-SPRINGER,  
AND THE CITY OF NEW YORK

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Defendants:-- (In their Official & Individual Capacities & Respondeat Superior).

1)-I, John Peterec-Tolino am the Plaintiff/Claimant in this action and have full standing to pursue such, as my reasons for such, impact the entire citizenry.

2)-Defendants: Pennrose, LLC; Pennrose Development, LLC; are headquartered at: 1301 N. 31<sup>st</sup> Street Philadelphia Pa; 19121 Phone #: (267) 386-8643.

They have a satellite office within the City of New York located at: 45 Main Street Suite 539, Brooklyn N.Y. 11201. They specialize in developing real estate property for low-income residents.

The City of New York and it's Department of Housing & Preservation & Development have chosen this LLC to develop a project called 'Haven Green' onto the land that encompasses the 'Elizabeth Street Garden' which is owned by the City of New York located just above 'Little Italy'.

3)-Defendant Riseboro Community Partnership is also involved with this 'Haven Green' Project coordinated with the City of New York's Dep't of Housing & Development. They are located at: 555 Bushwick Avenue, Bushwick, N.Y. 11206. Their contact phone number is: (718) 821-0254. It is a non-profit, having 501(c) (3) status.

4)-Defendant: Habitat for Humanity- New York is also involved in coordinating the 'Haven Green' Project. They also are a non-profit with 501 (c) (3) status. Their address is 111 John Street, New York, N.Y. 10038. Their phone contact number is: (212) 991-4000

## STATEMENT OF FACTS

5)-Within the New York State Court system, a Petition involving Elizabeth Street Garden, Inc; v The City of New York, Dep't of Housing & Preservation & Development has run its course and the Elizabeth Street Garden, Inc; had until September 10<sup>th</sup> 2024 to leave. Then it got extended to October 17<sup>th</sup> of 2024. However, the Garden recently won a reprieve by a City of New York Civil Court Judge extending the date that the N.Y. City Marshals pad-lock the gates of the Elizabeth Street Garden to October 30<sup>th</sup>, of 2024.

6)-The Elizabeth Street Garden is just that, a Garden and NOT a lot. Despite this, the City of New York in prior litigation, portrayed the garden as a lot, falsely, as a means to have the State Supreme Court wrongly recognize such for eviction purposes. This was un-Constitutional and a violation of Judiciary Law § 487.

7)-The City of New York's and Mayor Eric Adam's and Dep't of Housing & Preservation & Development (HPD) Commissioner, Adolfo Carrion Jr's objective is to tear down this Majestic Garden despite the will of the people objecting-- in favor of 123—Unit Affordable Rental Complex for 'senior citizens' called: 'Haven Green' coordinated and done by all defendants herein. This, despite countless letters of objection to this occurring in the thousands to the city defendants. The main defendant pushing for this outrage, vehemently with her 'blood-lust,' is First Deputy Mayor, Maria Torres-Springer.



All of these New York City defendant's outrageous conduct and arrogance and lust for power & control, fail to recognize that *they* work for *us*, not the other way around. Furthermore, their claims to city property are improperly implied as those properties including the Elizabeth Street Garden as a result, *belong to the taxpayer*, NOT these defendants herein in any capacity. In fact, it is not too big of a stretch to insinuate that these defendants herein are committing 'theft' by inflicting what they deem as necessary upon the Elizabeth Street Garden as opposed to the community they are supposed to represent. Although their supposed plans to build needed housing as to being altruistic is nothing but an illegal 'grab-bag,' being, close by are numerous better suited City owned properties for this purpose.

8)-All defendants herein are violating 'The Public Trust Doctrine', which has been around since Roman Times. In regards to the Elizabeth Street Garden,—The Public Trust Doctrine has been established that parks, open space, air waterways, shorelines and other natural resources *are to be preserved for public enjoyment*. Clearly, without 'splitting hairs', the Elizabeth Street Garden fully falls under this doctrine. As such, the actions of these New York City defendants are un-Constitutional.

9)-Eric Adams, Adolfo Carrion, Jr; and Maria Torres-Springer all took oaths of office to uphold both the US Constitution and the Constitution of the State of New York to represent their constituents. Clearly, they all have vehemently violated such and as a result, any proposals instigated and planned by these individuals are hereby tainted and should be ordered as to being null & void.

This, due to the spate of indictments and such that have occurred after the filing of my Original Verified Complaint, creating the premise that the City of New York has become a 'Bastion of Corruption,'—Although, as of this writing, Mayor Eric Adams is innocent until proven guilty.

10)-A timely 90-day Notice of Claim under General Municipality Law had been filed with the City of New York Comptroller on September 3<sup>rd</sup>, 2024 to include The City of New York, Mayor Eric Adams and the Commissioner for the Department of Housing & Development, Adolfo Carrion, Jr; etc. Please see EXHIBIT ONE (1) HEREIN. The acknowledgement to such, was dated September 13<sup>th</sup>, 2024. Please see: EXHIBIT TWO (2) herein. The proper time-frame has elapsed since then and as such the City of New York and its Municipal Defendants are now added as defendants in this Amended Verified Complaint which supersedes and replaces the Original Complaint based upon that similar premise.

11)-I fully thank Chief United States District Court Judge, Laura Taylor Swain for her courageous September 18<sup>th</sup> 'So Order' for me to proceed without prepayment of fees under 28 USC § 1915. This, resulting in the United States Marshals to draft SUMMONES to serve upon each and every defendant herein along with what now will be this Amended Verified Complaint.

12)-The defendants herein insist that this development be jammed down the throats of Community Board 2 which encompasses that area above 'Little Italy' despite enormous amounts of protestations which included film-maker & producer, Martin Scorsese, actor/film-maker Robert Dinero and Patti Smith.

13)-The City of New York has lost most of its amazing nostalgic character due to gentrification and the loss of open space as exemplified in those blogs and book called: "Vanishing New York".—Such is also exemplified in the fictional novel: "The Last Phone Booth on the Left in Brooklyn".

14)-Little Italy and SoHo make up to 23% of Community Board 2's population, of which contains the Elizabeth Street Garden. Yet, have only 3% of that District's open space. The area is a 'concrete jungle'. This, was known by these defendants.

15)-This plaintiff is aware of the housing shortage as a crisis in the City of New York. However, there are many alternate sites of City property that can be used for affordable housing that would not impact the public at large as choosing the Elizabeth Street Garden will absolutely be. Such alternate sites for affordable housing are the following: A)-388 Hudson Street, B)-21 Spring Street, C)-137 Centre Street, D)-2 Howard Street & E)-Site of 3 of SPURA—Delancey Street & Norfolk Street. This too was known by The City of New York, yet insist that the oasis haven of the Elizabeth Street Garden be disposed of, as if as some vendetta to the people who reside there, ignoring their vehement opposition of such happening.



## MORE THAN JUST A GARDEN WITH GORGEOUS STATUTES

16)-The Elizabeth Street Garden is officially certified by The National Wildlife Foundation as to being a registered 'way-station' for the endangered Monarch Butterfly. Already documented by the Endangered Species Act as to being 'endangered', a sixty (60) day Notice to The Secretary of the Interior and The Secretary of Commerce as a requirement to enact a Petition to 'qualify as endangered' is not needed.

Nor is the same not needed for The Elizabeth Street Garden to be designated as a registered 'way-station' for the Monarch Butterfly as this has already been established.

17)-As such, the Elizabeth Street Garden qualifies as a Conservation Land Trust.

18)-Plaintiff, herein has first-hand knowledge of the decline of the majestic Monarch Butterfly as I breed them every year. This year was the worst on record as only two (2) Monarch caterpillars were found and I only saw 5 Monarch Butterflies the whole season.

19)-The Monarch Butterfly larva (caterpillars) live and eat exclusively on 'Milk Weed' leaves.

20)-The Elizabeth Street Garden has numerous Milk Weed plants every year that thrive, which you can't find anywhere else in that neighborhood.

21)-The Elizabeth Street Garden has other plants that thrive there as well, the likes of flowers being: Roses, Zinnias, Marigold, Clover, Thistle and Golden Rod, etc; that the adult Monarch Butterfly feeds on from the nectar extracted from these flowers as do other pollinators, like honey bees who have had their own struggles over the years.

22)-Developing the Elizabeth Street Garden would be the death nel of the Monarch Butterfly in Manhattan, an absolute travesty that would break my heart.-- The Monarch Butterfly is already as previously stated herein, is an 'endangered species'.

### THE ENDANGERED SPECIES ACT OF 1973

23)-The Endangered Species Act of 1973, 16 U.S.C. 35 § 1531 et seq; was designed to protect critically imperiled species from extinction as a "consequence of economic growth and development untampered by adequate concern and conservation." The purposes of the ESA are two-fold: to prevent extinction and to recover species to the point where the law's protection is not needed.



24)-The U.S. Supreme Court found that “the plain intent of Congress enacting the ESA was to halt & reverse the trend toward species extinction, *whatever the cost.*”

25)-Via section 4 of the EPA, the Monarch Butterfly is endangered and as a result, critical habitat must be designated for a listed species.—The Elizabeth Street Garden has been designated as a critical habitat for the majestic Monarch Butterfly.

26)-Absent certain very limited situations of Section 10 of the EPA, it is illegal to “take” an endangered species, which is Section 9 of the EPA.—“Take” can mean kill, harm or harass, which is Section 3 of the EPA.

27)-These defendants herein would be in full violation of these sections of the Endangered Species Act of 1973 upon the Monarch Butterfly when they begin their development onto or within the Elizabeth Street Garden, when clearly, they have other alternate locations as options for such development as per The City of New York, close by & better suited. As such, there would be no harm done.

28)-Due to all stated herein my Claims & Causes of Action are that these Defendants are in full violation of the Endangered Species Act of 1973 as a federal Cause of Action the moment the ‘Haven Green’ Project ensues. As such, an immediate stay to prevent any & all development must ensue, with all due respect.

29)-Arguments I have brought forth involving the Monarch Butterfly were not brought forth in the capacity that I have herein, in the prior State case in regards to issues of ‘environmental impact review.’ As such, defendants herein cannot argue issues of Res Judicata or me being ‘collaterally estopped’ from stating such herein.

30)-Within that Article § 78 Petition, Defendant: The City of New York & The Department of Housing and Development in both their submitted Uniform Land Use Review (ULURP) as well as their submitted City Environmental Quality Review Process (CEQRP) failed to provide anything of substance that would allow these violations of The Endangered Species Act of 1973 to not take effect regardless and not prevent developing the Elizabeth Street Garden. As such, the Endangered Species Act violation(s) takes into effect and overrides any defense via the Respondent’s/Defendant’s, that being the City of New York’s and the Dep’t of Housing & Development’s submissions in that prior State Petition to successfully be used by these defendants herein.

31)-The Notice of Claim as per the ninety (90) day requirement is timely, as the Appellate Court’s Decision was on June 18<sup>th</sup>, 2024 for that prior State action.

## RELIEF SOUGHT

32)-Claimant herein seeks relief that the 'Haven Green' construction project to be **immediately stayed** during this litigation and then permanently banned from being done within the Elizabeth Street Garden as well as any future development projects to be off limits with prejudice, as well as any & all evictions to be permanently rescinded with no pad-locking. Any subsequent padlocking to be un-done immediately. This would not burden the City of New York or the developers as there are many close by options aside from the Elizabeth Street Garden.

*They say "you can't fight City Hall", however, this fight must be won against City Hall and these defendants herein.*

33)-This U.S. District Court is proper jurisdiction as this action is based upon a Federal law/statute that was enacted by the U.S. Congress.

Respectfully Submitted,

John Peterec-Tolino, Plaintiff/Claimant, Pro se

*John Peterec-Tolino*

244 Fifth Avenue, Suite J-292

New York, N.Y. 10001

(917) 628-7300, [otispdriftwood407@gmail.com](mailto:otispdriftwood407@gmail.com)

County of Sullivan  
 State of NY  
 The foregoing instrument was  
 acknowledged before me this  
24th day of Oct. 2024 by  
John Peterec  
 Name Of Person Seeking Acknowledgment  
Karen J. Barclay  
 Notary Public  
 My Commission Expires 6/7/27





# EXHIBIT ONE

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

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JOHN PETEREC TOLINO

Claimant/Plaintiff

-against—

NOTICE OF CLAIM VIA  
ARTICLE § 50 OF THE  
GENERAL MUNICIPALITY LAW

THE CITY OF NEW YORK,  
MAYOR ERIC ADAMS &  
DEPARTMENT OF HOUSING &  
DEVELOPMENT COMMISSIONER,  
ADOLFO CARRION, JR

Respondents:-- (In their Official & Individual Capacities & Respondeat Superior).

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1)-I, John Peterec-Tolino am the Claimant in this Notice of Claim action and have full standing to pursue such, as my reasons for such, impact the entire citizenry.

#### STATEMENT OF FACTS

2)-Within the New York State Court system, a Petition involving Elizabeth Street Garden, Inc; v The City of New York has ran its course and the Elizabeth Street Garden has until September 10<sup>th</sup> 2024 to leave. This is an utmost tragedy.

3)-The Elizabeth Street Garden is just that, a Garden and NOT a lot. Despite this, the City of New York in prior litigation, portrayed the garden as a lot, falsely, as a means to have the State Supreme Court wrongly recognize such for eviction purposes. This was un-Constitutional and a violation of Judiciary Law § 487.

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5)-The defendants herein insist that this development be jammed down the throats of Community Board 2 which encompasses that area above 'Little Italy' despite enormous amounts of protestations which included film-maker & producer, Martin Scorsese, actor/film-maker Robert Dinero and Patti Smith.

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10)-As such, the Elizabeth Street Garden qualifies as a Conservation Land Trust.

11)-Plaintiff, herein has first-hand knowledge of the decline of the majestic Monarch Butterfly as I breed them every year. This year was the worst on record as only two (2) Monarch caterpillars were found and I only saw 5 Monarch Butterflies the whole season.

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### THE ENDANGERED SPECIES ACT OF 1973

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18)-These defendants herein are in full violation of these sections of the Endangered Species Act upon the Monarch Butterfly when they begin their development onto or within the Elizabeth Street Garden, when clearly, they have other alternate locations as options for such development close by & better suited.



19)-Due to all stated herein my Claims & Causes of Action are that these Defendants are in full violation of the Endangered Species Act of 1973 as a federal Cause of Action as well as via the prior State actions, as these defendants were in violation of Judiciary Law § 487 being they insisted on labeling the Elizabeth Street Garden as a lot and not a garden. A plot of land qualifies as a lot if it is developed or completely empty. The Elizabeth Street Garden is neither developed nor empty.

20)-Arguments I have brought forth involving the Monarch Butterfly were not brought forth in the capacity that I have herein, in the prior State case in regards to issues of 'environmental impact review.' As such, defendants herein cannot argue issues of Res Judicata or me being 'collaterally estopped' from stating such herein.

21)-Within that Article § 78 Petition, Defendant: The City of New York & The Housing and Development Department in both their submitted Uniform Land Use Review (ULURP) as well as their submitted City Environmental Quality Review Process (CEQRP) failed to provide anything of substance that would allow these violations of The Endangered Species Act of 1973 to take effect regardless and prevent developing the Elizabeth Street Garden. As such, the Endangered Species Act violation(s) takes into effect and overrides any defense via the Respondent's/Defendant's submissions.

22)-This Notice of Claim as per the ninety (90) day requirement is timely, as the Appellate Court's Decision was on June 18<sup>th</sup>, 2024.

### RELIEF SOUGHT

23)-Claimant herein seeks relief that the Haven Green construction project to be permanently banned from being done within the Elizabeth Street Garden as well as any future development projects to be off limits with prejudice, as well as any & all evictions to be permanently rescinded. This would not burden the City of New York or the developers as there are many close by options aside from the Elizabeth Street Garden.

24)-They say "you can't fight City Hall", however, this fight must be won.

Dated 9/3/2024  
New York, N.Y.

Respectfully Submitted,  
John Peterec-Tolino, Claimant, Pro se

John Peterec-Tolino

244 Fifth Avenue, Suite J-292

New York, N.Y. 10001

(917) 628-7300, [otispdriftwood407@gmail.com](mailto:otispdriftwood407@gmail.com)

County of Sullivan  
State of NY

The foregoing instrument was  
acknowledged before me this

3rd day of Sept. 2024 by

John Peterec  
Name Of Person Seeking Acknowledgment

Karen J. Barclay  
Notary Public  
My Commission Expires 6/7/27



# EXHIBIT TWO





015 - 152

**THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
CLAIMS AND ADJUDICATIONS  
1 CENTRE STREET ROOM 1200  
NEW YORK, N.Y. 10007-2341**

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**Brad Lander  
COMPTROLLER**

Date: 9/13/2024  
RE: Acknowledgment - Law  
JOHN PETEREC POLINO  
Claim Number: 2024LW029117  
Contract no:

JOHN PETEREC POLINO  
244 5TH AV SUITE J 292  
NEW YORK NY 10001

Receipt is hereby acknowledged of your claim against the City of New York. Please refer to the above claim number on any correspondence or inquiry you may have with this office. The claim is currently under investigation. If you have any questions regarding your claim, you may contact us at 212-669-4736.

Yours truly,  
Bureau of Law & Adjustment